IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6479 of 2004

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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RAMKISHOR JETHALAL PANDYA & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SK PATEL for Petitioner(s) : 1 - 5.

MR NAGESH SOOD AGP for Respondent(s) : 1 - 2.

MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : *HONOURABLE MS. JUSTICE R.M.DOSHIT*

Date : 17/10/2005

ORAL JUDGMENT

The petitioners before this Court are the Homeopathic Medical Officers [*Class-III*] in the service of various Panchayats. By Order dated 31st May, 2004, the petitioners have been transferred from their parent district to the other districts of Amreli, Banaskantha,

Mehsana and Kachchh. Feeling aggrieved, the petitioners have preferred the present petition under Article 226 of the Constitution.

Mr. Patel has submitted that the petitioners were originally appointed as Homeopathic Medical Officers in Gujarat Ayurved Services [*Class-III*] by the State Government. On 17th September, 1989 the State Government in exercise of powers conferred upon it by sub-section (1) of Section 321 of the Gujarat Panchayat Act, 1961 [hereinafter referred to as, "***the Act of 1961***"] authorized the Director of Indian Systems of Medicine & Homeopathy Medicines, Gandhinagar [hereinafter referred to as, "***the Director***"] to make order of allocation under Section 206 of the Act of 1961. Pursuant to the said order, by Order dated 13th December, 1989 the petitioners were allocated to the concerned District Panchayats as per the statement annexed to the Order dated 13th December, 1989. Mr. Patel has submitted that the petitioners were allocated to the concerned District Panchayats by the aforesaid order dated 13th December, 1989. The petitioners have, therefore, become the servants of the concerned District Panchayats and are not liable to be transferred out of their Districts. *Nevertheless*, the Director has made the *impugned* order

and has transferred the petitioners out of their districts. The impugned order of transfer has been made without the authority of law and is liable to be set aside.

Mr. Sood has contested the petition. He has submitted that upon transfer of the functions of the State to the Panchayats, the petitioners also were transferred to the concerned Panchayats. However, the petitioners were never allocated to the concerned Panchayats. The petitioners have, therefore, been continued as the State servants and are not the servants of the District Panchayats. The petitioner being Government servants, are liable to be transferred anywhere within the State. He has relied upon the counter affidavit made by the Assistant Director of Indian Systems of Medicines & Homeopathy Medicines. He has submitted that all along, the petitioners were considered to be the Government servants and were paid the service benefits accordingly. Earlier also, the petitioners were transferred out of the concerned districts. He has relied upon the Government Order dated 31st August, 1991. He has submitted that till 31st August, 1991, the petitioners were not allocated to the Panchayat service. They were not allocated to Panchayat service after the Order dated

31st August, 1991 also. Thus, till today the petitioners are the servants of the State Government.

I am unable to agree with Mr. Sood. By its Order dated 19th September, 1989 made in exercise of power conferred by Section 157 of the Act of 1961, the State Government transferred the powers and functions under the control of the Director to the District Panchayats on and from 1st October, 1989 together with the personnels as specified in the schedule to the said order. By the said Order, the service of the petitioners stood allotted to the respective Panchayats. By Notification dated 17th September, 1989 issued by the State Government in exercise of powers conferred by Sub-section (1) of Section 321 of the Act of 1961, the State Government authorized the Director to exercise powers exercisable by the State Government under Section 206 of the Act of 1961 in respect of Class-III & Class-IV Government servants under his jurisdiction. In exercise of the said powers, the Director by its Order dated 13th December, 1989 made under Section 206 of the Act of 1961, *inter alia*, allocated the petitioners to the respective District Panchayats.

Section 157 of the Act of 1961 empowered the State Government, *inter alia*, to transfer to the District Panchayats such powers, functions and duties as were exercised or performed by the Department of Public Health & Medical Relief and to allocate such funds and staff, as may be necessary. Section 206 of the Act of 1961 empowered the State Government to allocate its officers and servants out of the staff allocated or transferred to the Panchayat. Section 206-A of Act of 1961 empowered the State Government, *inter alia*, to reallocate such officers and servants allocated to the Panchayat service. Sub-section (2) thereof provided that an officer or servant who was not reallocated and was continued in Panchayat service before the expiry of the period of four years shall, on expiry of four years, be deemed to be finally allocated to the Panchayat service. Thus, the power of the State Government to reallocate its officers or servants allocated to the Panchayat service was circumscribed by the period of limitation of four years. Section 321 of the Act of 1991, *inter alia*, empowered the State Government to delegate any of the powers exercisable by the State Government under the Act of 1961 to any officer of the Government. The petitioners who were allocated to the Panchayat service as far back as on

13th December, 1989 continued to be the member of Panchayat service till the date of the *impugned* order. The contention that the petitioners were never allocated to the Panchayat service, *inspite* of the above referred Notification dated 17th September, 1989 and the Order dated 13th December, 1989, is not tenable. The petitioners indeed were allocated to the Panchayat service by the aforesaid order dated 13th December, 1989. Moreover, as disclosed in the communication dated 9th June, 2004 of the District Development Officer, Bharuch; pursuant to the aforesaid order of allocation dated 13th December, 1989 made by the Director, the District Panchayat, Bharuch had by its Resolution No. 131 passed on 31st December, 1990 accepted such allocated servants as its servants. In presence of the aforesaid documentary evidence, it does not lie in the mouth of the Assistant Director to say that the petitioners were not allocated to Panchayat Service and that they had continued to be the servants of the State.

It should be noted here that under the Gujarat Panchayat Services [*Transfer of Service*] Rules, 1995, the State Government or an Officer authorized by the State Government is empowered to transfer a member of Panchayat service in a District to the corresponding cadre in other

district, if in the opinion of the State Government or the Officer authorized, such transfer is required to be made in the interest of public. Though it is the case of the respondents that the *impugned* order of transfers was required to be made in the interest of public, the same evidently has not been made in exercise of powers conferred by the aforesaid Rules of 1995. Neither the *impugned* order of transfers is made by the State Government nor it is the case of the Director that he was empowered to exercise power of transfer conferred by the aforesaid Rules of 1995.

It is not in dispute that Homeopathy Medical Officers [*Class-III*] is a District Cadre. An Officer in the said Cadre is transferable within the district alone. The impugned order of transfers, though may have been made in interest of public, has been made without the authority of law. The same, therefore, requires to be *quashed* and set-aside.

For the aforesaid reasons, the petition succeeds. The transfer of the petitioners made under the *impugned* order dated 31st May, 2004 are *quashed* and set-aside. The respondents are directed to re-transfer the petitioners to their parent districts. On their re-transfer, they may

be given appropriate posting order within the district. The aforesaid exercise shall be completed as early as possible but not later than 30th November, 2005.

Rule is made absolute in the above terms. There shall be no order as to cost. The ***Registry*** shall send the *writ* forthwith.

[Miss R.M Doshit, J.]

*Prakash**